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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/618,954	07/19/2000	Edgar Allan Tu	FUSI-05000	2140

7590
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EXAMINER

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ART UNIT	PAPER NUMBER
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2445

MAIL DATE	DELIVERY MODE
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07/18/2011

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDAR ALLAN TU and ERIC PANG

Appeal 2009-011670
Application 09/618,954
Technology Center 2400

Before JOSEPH L. DIXON, JOHN A. JEFFERY, and THU A. DANG,
Administrative Patent Judges.

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-6 and 23-26. Claims 7-22 are withdrawn from consideration. App. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Appellants' invention provides remote and secure access to a host computer via an open application standard. *See generally* Spec. 1, 5-8. Claim 1 is illustrative:

1. A system for providing access to a base device identified with a user of a remote client device, said remote access system comprising:

- a) a web server operatively coupled for communication with the remote client device accessed by the user; and
- b) a user server operatively coupled to said web server and said remote client device, said user server further configured to communicate data between the base device and the user of the remote client device, said user server further configured to communicate data with said base device via requests initiated by said based device.

The Examiner relies on the following as evidence of unpatentability:

Kikinis	US 6,167,120	Dec. 26, 2000 (filed June 24, 1998)
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THE REJECTION

The Examiner rejected claims 1-6 and 23-26 under 35 U.S.C. § 102(e) as anticipated by Kikinis. Ans. 3-6.¹

CONTENTIONS

Regarding independent claim 1, the Examiner finds that Kikinis provides access to a “base device” (i.e., support technician workstation 122) that is said to be identified with a user of a remote client device. Ans. 3-7. According to the Examiner, Kikinis’ “user server” (i.e., home server unit 100) communicates data with the “base device” via requests initiated by the

¹ Throughout this opinion, we refer to (1) the Appeal Brief filed August 12, 2008; (2) the Examiner’s Answer mailed April 2, 2009; and (3) the Reply Brief filed May 21, 2009.

base device as claimed since the support technician “invariably” initiates requests to the user server to initialize, configure, debug, and support the system. *Id.*

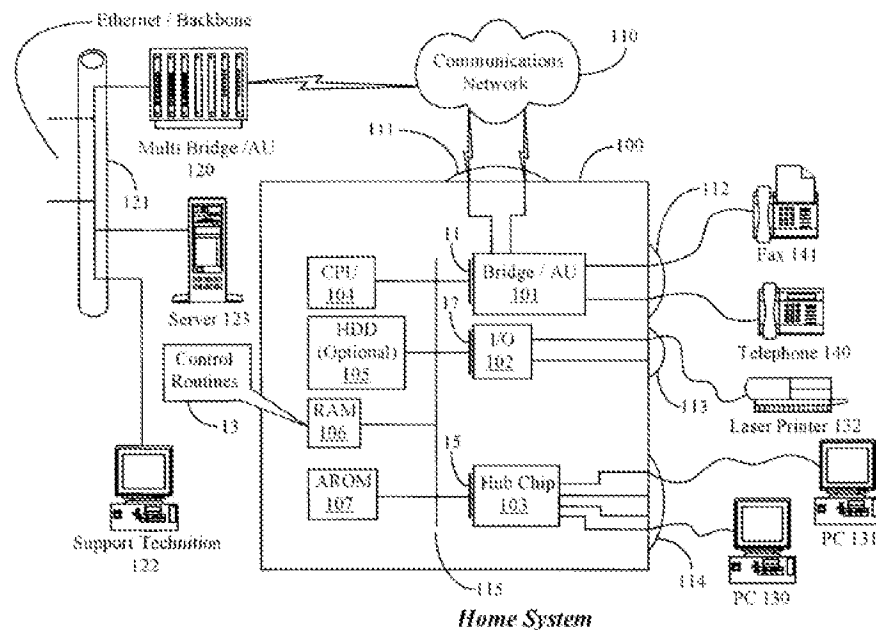
Appellants challenge these findings as unsupported since Kikinis does not initiate data requests, let alone by a base device identified with the user as claimed. App. Br. 18-23; Reply Br. 5-6. The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Kikinis discloses a user server configured to communicate data with a base device identified with a user of a remote client device via requests initiated by the base device?

FINDINGS OF FACT (FF)

1. Kikinis’ support technician workstation 122 is (1) located at the service provider’s end of a home networking system, and (2) connected to Ethernet backbone 121. Server 123 and Multi-Bridge Adapter Unit 120 are also connected to the backbone at the service provider end. Kikinis’ home network is shown in Figure 1 reproduced below:



Kikinis' home network in Figure 1

2. Kikinis' Multi-Bridge Adapter Unit 120 receives and processes data packets delivered over network 110, and (2) sends data packets from the service provider's end to Home Server Unit 100 identified for the PC or peripheral device to which each transmission is intended. Kikinis, col. 4, ll. 40-50; Fig. 1.

ANALYSIS

This appeal hinges on one question: Is Kikinis' home server unit 100 (i.e., the "user server") *necessarily* capable of communicating data with the identified "base device," namely Kikinis' support technician workstation, via requests initiated by that workstation?

We are constrained by this record to answer this question "no." As Appellants indicate (Reply Br. 5), Kikinis provides scant disclosure of the support technician workstation's functionality apart from merely indicating

its connection to an Ethernet backbone on the service provider's end of the system. FF 1. Based on this limited disclosure, we cannot say that the support technician workstation ("base device") *necessarily* initiates requests to enable it to communicate with (1) the home server unit ("user server") as recited in independent claim 1, or (2) the identified remote client devices (i.e., the PCs, fax, telephone, and printer) (Ans. 3) as recited in independent claims 23 and 25.

The Examiner's assertion that Kikinis' support technician workstation "invariably" initiates requests to the user server (i.e., the home server unit) to initialize, configure, debug, and support the system (Ans. 7) is speculative and unsubstantiated on this record. Although the support technician workstation is connected to the user server via an Ethernet backbone, adapter unit, and network (FF 1), we cannot say that the support technician workstation *necessarily* initiates requests, let alone that such requests are used to facilitate communication between the workstation and the home server unit or remote client devices. Nor can we say that this workstation is *necessarily* identified with a user of the remote client device as claimed. Indeed, it may be that the support technician workstation is intended to communicate solely with devices on the service provider's end: we simply cannot tell from the limited evidence on this record. Although Kikinis' adapter unit communicates with the home server unit and client devices via the network, the same cannot *necessarily* be said for the support technician workstation. Nor will we speculate in this regard here in the first instance on appeal.

We are therefore constrained to find that the Examiner erred in rejecting (1) independent claim 1; (2) independent claims 23 and 25 which recite commensurate limitations; and (3) dependent claims 2-6, 24, and 26 for similar reasons.

CONCLUSION

The Examiner erred in rejecting claims 1-6 and 23-26 under § 102.

ORDER

The Examiner's decision rejecting claims 1-6 and 23-26 is reversed.

REVERSED